

[Note: Tape 3B, Side A, and Side B first three-quarters entirely a discussion on HB2983]

(Representative Curtis Seidlits in the Chair)

SEIDLITS: At this time we are going to depart just a minute and leave House Bill 2983 pending while we take up some other business of the Committee. What's the number on this bill? At this time we would recall from pending business House Bill 668 by Junell, which is the Deceptive Trade Practice Act revisions. And Walt is passing out a Committee Substitute right now. You were given earlier a draft that had some red markings and some x's; those were my red marks and x's. Since then Legislative Council has drafted it in council form and incorporated those changes into this Committee Substitute, which should be 74R11059DLF-F is what you should have. So I would lay out-- they put this one pretty high priority, I tell you. I'll also hand out to each side a little-- a bill analysis and comparison with the bill that was introduced so we'll know what's going on here. (I need some more. How many have you got there Bob? OK.)

Committee Substitute to House Bill 668 is now before us. Members, I just explained on the little bill analysis that is coming to you, and as you look through the bill, it incorporates the same form as the bill as originally introduced. It allows a written waiver if the consumer is not in a significantly dispirited bargaining position, which was the law before, it keeps that provision. The consumer is represented by independent legal counsel and the agreement contains a Notice of Waiver. Those are the provisions for the waiver on page 1. It also sets forth on 2 pretty much as on the original bill what a waiver in the section must be, conspicuous bold faced type, that you waive your rights under the DTPA, etc. It also keeps the same as the other bill concerning the cross-references of that Residential Construction Liability Act exemption that we heard testimony of. I think that's Property Code Section 27, if I'm not mistaken. It limits the recovery of a plaintiff or a claimant to economic damages unless the defendant acted knowingly, so it raises that from the law as we know it today. If it's knowingly the consumer can recover those non-economic damages as well. It still talks about grossly unfair conduct or that results in a gross disparity between consideration and value. There is some language concerning opinions, advice and judgments. The bill does not exempt express misrepresentations, non disclosures, unconscionable conduct, or breaches of warranty. It also in claims arising from arms length contracts negotiated by a consumer who is represented by independent counsel in a transaction for more than \$200,000 that does not relate to consumer's resident, it sets out those folks are not in the act. It caps it; whereas there's been different talk on transactional amounts, this involves consideration, sets the cap at \$1 million, and it adds the element of detrimental reliance that a consumer must have in relying on conduct prohibited by the laundry list. It allows the defendant to recover attorney's fees who's claim is groundless in fact in the law. That's under I think section 4. It also sets out, probably don't have to do it but we wanted to make sure that this would be governed as far as joint several liability bill, whatever we do under Chapter 33 when we come to that bill, so it just refers to that. It also sets out a fairly exhaustive mediation and offer of settlements, which I believe was in the original bill, or Mr. Hunter had brought that to us through Mr. Junell. And the reason being is we try to encourage a procedure for settling these cases before they go to court, and mediation seems to be the best way we do it. We also incorporate the general venue statute, the bill we passed the other day would be there. One of the changes, and it's been in several drafts -- it was in Mr. Junell's draft and I know Mr. Duncan and Mr. Hunter have worked on it -- under Article 2121 of the Insurance Code, we set that out here, we codify, we take away the rules and regulations and codify them in Section 4, which actually is Section 10 under this bill on page 24, talks about unfair settlement practices, and those come from codification of those rules and regs of the Insurance Commission upon which you could make a claim. In 2121 we try to make the damage issue on 2121 (let me make sure that's still in there) from the mandatory to the may permissive in that area. (What else did we do?) That's pretty much the highlights. We set out a course that you can't recover double recovery; that's an important provision in there. Any other questions? Delwin.

JONES: Tell me again what's the difference in the substitute with reference to insurance, compared to insurance in the previous.

SEIDLITS: I think it was in the one that we talked about. Under Article 2121 there's no laundry list or codification of those claims that come from the Insurance Commission rules and regulations. And what we've attempted to do is codify those in statute so the Legislature sets those based from those rules, and the Insurance Commission would not expand those. That would be what it is.

JONES: But we're not exempting them from the Deceptive Trade Practices.

SEIDLITS: No, we're not exempting insurance companies from the Deceptive Trade Practices.

JONES: We're just codifying the insurance rules into the Legislative Act. So it's easier to determine what cause or actions could or not be.

SEIDLITS: Right. Any other questions?

DANBURG: There is nowhere in here a specific exemption as to any particular profession, like realtors, CPAs, as was in the original.

SEIDLITS: No, the advice, opinion, or judgment, there is a section on that, but it does not-- if you recall the Committee concern and the testimony about express misrepresentations or non disclosures. All of those are still actionable.

DANBURG: And how have you defined professional services?

SEIDLITS: I don't think we have.

DANBURG: We had some discussion at one point about the whole issue of whether you could just say "in my professional opinion I could exterminate this house for \$200," and that would exempt them because they've said it was their professional opinion even though that's not what most people considered to be professional opinion.

SEIDLITS: I think there is a definition for professional services. I think that probably that would be a-- it's on page 5, line 6: "nothing in the subchapter shall fight or claim for damages based on the rendering of a professional service, the essence of which is the providing of advice, judgment, or opinion," and then we say it does not apply to the advertising misrepresentation, etc. I would think that that will be probably determined by the court as the determinant of what is a professional service. Bill?

CARTER: Under this venue section, it just says it incorporates the general venue statute as it is now and does not have anything to do with what we're talking about in the bill.

SEIDLITS: No, it will be whatever the general venue statute that comes-- that came out of this Committee and came out of the Senate floor today. Whatever the venue statute is it will be.

CARTER: That will be what then this will apply to?

SEIDLITS: Right.

CARTER: But even if we didn't pass them, the present would be covered by this, right. So, if we pass it we change the venue and then it applies, but if they fail it doesn't affect this bill. Is that correct?

SEIDLITS: If I'm understanding your question, that's correct.

CARTER: Yes, even the venue bill that we've considered should not finally get passed or get signed into law, it wouldn't have any effect on this bill in any area except whatever venue changes are involved.

SEIDLITS: Right, OK. Let me make sure of that. Bill, it would be whatever Chapter 15 of the venue is. Any other questions. Scott?

HOCHBERG: Chairman, one thing I can't find in the bill, which makes me think it's not in the bill and I just want to make sure it's not in the bill. We had a lot of discussion when this first came up about who could be a plaintiff.

SEIDLITS: That didn't change. Consumer stays the same.

HOCHBERG: OK. Thank you.

SEIDLITS: All right. Is there any objection to the adoption of this Committee Substitute for House Bill 668? Chair hears none. Committee Substitute for House Bill 668 is adopted. Mr. Hilbert moves that Committee Substitute for House Bill 668 be reported back to full House with favorable recommendation that it pass and be printed, placed on general calendar.

VOTE CALL: [all ayes] Siebert, Turner, Alvarado, Bly, Bosse, Carter, Craddick, Danburg, Hilbert, Hochberg, Hunter, Jones, McCall, Ramsey, Wolens.

SEIDLITS: Committee Substitute for House Bill 668 will be reported to full House for favorable recommendation that it pass and be printed. OK. [background conversation] At this time we are going to recall from pending business House Bill 1718 by Representative Turner, which was the Open Records.

[Continues on HB1718 to end of Tape 3B, Side B]